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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15 THE CITY AND COUNTY OF SAN
16 FRANCISCO, CALIFORNIA and THE
16 PEOPLE OF THE STATE OF
17 CALIFORNIA, Acting by and through San
17 Francisco City Attorney DENNIS J.
18 HERRERA,

18 Plaintiffs,

19 v.

20 PURDUE PHARMA L.P., et al.

21 Defendants.

22 Case No. 3:18-cv-07591-CRB-JSC

23 **JOINT STATUS UPDATE**

24 **Judges:** Hon. Charles R. Breyer and Jacqueline
24 Scott Corley

25 **Courtroom:** Via Videoconference

26 **Hearing Date:** May 10, 2021

27 **Hearing Time:** 8:30 a.m.

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1 The parties respectfully submit this Joint Status Update in advance of the Court's
 2 discovery conference scheduled for May 10, 2021 at 8:30 a.m.

3 **I. JOINT STATEMENT REGARDING SCHEDULE AND DISPUTE RESOLUTION**

4 The parties jointly report on a number of case developments that have taken place since
 5 the last conference with the Court.

6 **A. Joint Request for a Schedule Extension**

7 For the reasons set forth in the parties' respective sections, the parties jointly request a
 8 four-month extension to the existing deadlines in the schedule. The specific dates the parties
 9 propose are reflected in the chart below.

| Event | Current Schedule | Parties' Proposal |
|---|-------------------------|--------------------------|
| Document Production Substantial Completion Deadline ¹ | February 26, 2021 | June 21, 2021 |
| Plaintiff's expert reports | May 21, 2021 | September 14, 2021 |
| Close of Fact Discovery | July 2, 2021 | October 22, 2021 |
| Defendants' Expert Reports | July 23, 2021 | November 11, 2021 |
| Plaintiff's Expert Rebuttal Reports | August 20, 2021 | December 6, 2021 |
| Close of Expert Discovery | September 3, 2021 | December 20, 2021 |
| Motions for Summary Judgment and <i>Daubert</i> Motions | September 24, 2021 | January 10, 2022 |
| Oppositions to Motions for Summary Judgment and <i>Daubert</i> Motions | October 22, 2021 | February 10, 2022 |
| Replies in Support of Motions for Summary Judgment and <i>Daubert</i> Motions | November 5, 2021 | February 24, 2022 |
| All Trial Materials Due | November 12, 2021 | March 3, 2022 |
| Final Pretrial Conference | November 19, 2021 | March 14, 2022 |
| Trial | December 6, 2021 | April 4, 2022 |

23 **B. Update on Status of Settlement among Stipulating Parties (Docs. 518-19)**

24 On January 26, 2021, the Court stayed the proceedings as to the Stipulating Defendants.
 25 The Stipulating Parties submitted a status update on March 29, 2021 (Doc. 518), and on March
 26 31, 2021, Judge Breyer ordered the parties to submit a second update within 45 days (Doc.
 27 519)—*i.e.*, by May 15, 2021.

28 ¹ Including documents related to abatement costs in Plaintiff's possession.

1 In the meantime, on April 28, 2021, the Stipulating Defendants and MDL Plaintiffs'
 2 Executive Committee appeared before MDL Judge Dan Polster to discuss the status of the
 3 settlement negotiations. Two further status conferences are scheduled for May 7 and May 17.

4 **C. Discovery Orders Issued Since Prior Conference (Docs. 530, 545)**

5 Following the last status conference, the Court issued three discovery orders. In the
 6 first, the Court ordered various productions, production deadlines, and meet and confer
 7 obligations for Plaintiff and Walgreens. Doc. 530. In the second, the Court granted the
 8 stipulation by Walgreens and the California Department of Justice regarding CURES data. Doc.
 9 538. In the third, the Court made certain findings regarding Plaintiff's motion for Walgreens'
 10 electronic due diligence records and directed the parties to confer and, if necessary, submit
 11 further briefing on the scope of the protective order. Doc. 545.

12 **D. Discovery Motions**

13 The parties have briefed three disputes pursuant to the revised resolution protocol
 14 outlined in Discovery Order No. 2 (Doc. 382), as well as one additional dispute arising from the
 15 Order Re: Plaintiff's Motion to Compel Walgreens' Electronic Due Diligence Records. Those
 16 disputes are outlined in the chart below.

| Moving Party | Responding Party | Dispute | Doc. |
|---------------------|-------------------------|--|-------------|
| Walgreens | Plaintiff | Motion to compel responses to Walgreens Interrogatories 1 & 2 re illegitimate and diverted prescriptions | 544 |
| Walgreens | Plaintiff | Motion to compel production of prescription due diligence records | 549 |
| Plaintiff | Endo/Par | Motion to compel complete interrogatory answers | |
| Joint | Joint | Dispute re interpretation of protective order | |

23 **II. PLAINTIFF'S STATEMENT**

24 **A. Case Schedule**

25 As noted above, the parties have jointly requested a four-month extension. From
 26 Plaintiff's perspective, this extension was made necessary both by recent health concerns
 27

1 (surgeries) and schedule conflicts with Plaintiff's experts and by significant deficiencies in
 2 Defendants' discovery, outlined below.²

3 **B. Defendants' Production Deficiencies**

4 Plaintiff has chronicled Defendants' many discovery deficiencies in past status reports
 5 and will not repeat them all here. But a select few, including several that have become evident
 6 only recently, require emphasis.

7 **1. Endo/Par**

8 Just this week, **Endo** finally agreed (after Plaintiff briefed a motion to compel) to add
 9 multiple new custodians and to engage in further searches for responsive documents. The new
 10 custodians will include (1) four district managers whose files have not been searched or
 11 produced in any other opioid litigation and (2) seven more sales representative custodians added
 12 after Plaintiff identified significant gaps in Endo's productions. The addition of **eleven** new
 13 custodians and multiple new term-based searches (all of which should have been included
 14 months ago) is expected to yield a significant volume of additional documents for which Endo
 15 has provided no production timeline.

16 Plaintiff is also awaiting productions from the files of four new Par marketing
 17 custodians, documents relating to Endo's Medical Science Liaisons ("MSLs"), including
 18 custodian Bobby Sue Brown, and missing data from Endo's Call Data File and Materials
 19 Dropped Data File. Par has indicated it expects to **begin** its custodial productions the week of
 20 May 10, and indicates that the production will not be substantially complete until the week of
 21 June 4. As far as Ms. Brown's files and the missing data are concerned, Plaintiff has recently
 22 learned that Endo maintains a "Commercial Data Warehouse" that is believed to house
 23 materials relating to Endo MSLs (and potentially more) but has not yet been thoroughly

24
 25
 26 ² Plaintiff disputes the assertion that Defendants first learned about Plaintiff's interest in
 27 negotiating the schedule on May 6. In fact, Plaintiff contacted one of defendants' counsel on
 April 27, 2021—almost immediately after learning about an expert's health emergency—to
 discuss schedule modifications. Plaintiff was told that that request was communicated to all
 28 defense counsel. Finally, while Defendants suggest below that four months may not be a long
 enough extension, it reflects a compromise to which they agreed, begrudgingly or not.

1 searched for responsive materials. Plaintiff is seeking clarity on what additional information
 2 may reside in the Commercial Data Warehouse that has not been previously produced.

3 These delays have impeded Plaintiff's ability to select deponents (particularly in light of
 4 the fact that Plaintiff has been allotted an average of only seven depositions per Defendant
 5 family) and to prepare its expert opinions.

6 **2. Walgreens**

7 To date, Walgreens has produced approximately 200,000 pages specific to this
 8 litigation—nearly 60% of which were produced *after* the February 26, 2021, substantial
 9 completion deadline. Moreover, Walgreens produced more than 73,000 pages (nearly 40% of
 10 its existing San Francisco production), including the bulk of the documents from the
 11 jurisdiction-specific dispensing custodians, *this week*. And that's not all. As of now, Walgreens
 12 has produced roughly 10,000 in-store, hard-copy due diligence documents, which Walgreens
 13 represents is less than one third of the total that Walgreens must produce by the Court-ordered
 14 deadline of May 17. This means that Walgreens will be dumping *20,000 additional documents*
 15 (not pages) a week or less before the existing expert deadline. To be clear, these late-produced
 16 due diligence and custodial documents need to be analyzed both to select deponents³ and to
 17 inform Plaintiff's expert opinions. The same goes for Walgreens' Electronic Notes of
 18 prescription due diligence, which Walgreens has not produced and which, as the Court
 19 recognized, “are directly relevant to Plaintiff's claims and Walgreens' defense.” Doc. 545 at 1.

20 **3. Allergan and Teva**

21 Allergan has several deficient interrogatory responses, the answers to which will affect
 22 Plaintiff's expert analysis. As one example, Allegan has not identified, or even pointed to
 23 documents containing, the statements it and its former employees, subsidiaries, and
 24 representatives made or caused to be disseminated in the jurisdiction—a failure that directly
 25 impact the analysis of Plaintiff's marketing expert(s). Further, while Allergan provided
 26

27 ³ Adding to the difficulty in identifying deponents is the fact that Walgreens *still* has not
 28 answered interrogatories served in November 2020 seeking, among other things, the identification
 of Walgreens' divisions and personnel responsible for compliance in this jurisdiction. Walgreens
 represents that amended answers will be produced on Friday, May 7.

1 monthly prescription figures for two branded opioids it sold for both California and San
 2 Francisco, it has not provided such figures for the balance of its opioids, omitting more than 90
 3 percent of the volume of drugs it sold into San Francisco. Allergan's counsel has agreed to
 4 provide additional answers in certain respects and is considering (but has not yet agreed) to
 5 supplement in other respects.

6 Teva responded to Plaintiff's first set of interrogatories last week. Plaintiff is evaluating
 7 those responses, including the numerous documents cited therein. Moreover, Teva did not
 8 certify completion of its ESI production for key custodians to which the parties agreed in
 9 December 2020, including Debra Barrett—Teva's Senior Vice President of Global Government
 10 Affairs and Public Policy—until April 28, 2021. Plaintiff is reviewing those productions now
 11 and will promptly address any deficiencies with Teva.

12 **C. Plaintiff's Productions**

13 As reported previously, Plaintiff has produced more than 400,000 documents comprising
 14 well over two million bates-stamped pages. Plaintiff has also met, or is on its way to meeting,
 15 the deadlines the Court set regarding the few remaining categories of outstanding documents.
 16 Finally, following the last hearing, Plaintiff agreed to produce from CDW *all* the narratives
 17 associated with "opioid-specific incident codes" in addition to the narratives associated with
 18 prescription forgery incidents. Plaintiff has completed the forgery production and begun a
 19 rolling production of the remainder, which will be completed shortly.

20 **III. DEFENDANTS' STATEMENT**

21 **A. Status of Party Discovery**

22 **1. Case Schedule**

23 After Plaintiff first raised its need for an extension of the schedule on April 27, 2021,
 24 Defendants had been requesting a proposal from Plaintiff for some time. Just yesterday, May 6,
 25 Plaintiff proposed to Defendants a three-month extension of the Court's schedule, citing various
 26 scheduling conflicts and health concerns regarding their experts, the pendency of other trials,
 27 and discovery deficiencies. Despite having less than 24 hours to consider Plaintiff's request
 28

1 before finalizing the status report, Defendants have agreed to jointly request a four-month
 2 extension of all dates in the schedule, including the trial date.

3 Defendants write separately to explain to the Court that a four-month extension may not
 4 be sufficient time to complete discovery, despite the parties' best efforts. For example, Plaintiff
 5 has moved to compel production of prescription notes for all of Walgreens' dispensing data in
 6 San Francisco, which would require a tremendously burdensome collection effort, to say
 7 nothing of the time necessary to review and redact prescription notes for sensitive protected
 8 information such as patient names. In addition, Defendants have identified numerous potential
 9 deficiencies in Plaintiff's production, detailed below, which have prevented Defendants from
 10 noticing several depositions. Defendants agree that a four-month extension is necessary, but it
 11 may not be sufficient.

12 **2. Defendants' Discovery Requests**

13 In advance of the Court's February 26, 2021 deadline for substantial completion of
 14 document productions, Plaintiff identified 30 custodial email productions as substantially
 15 complete. On April 12, 2021, Plaintiff represented it had substantially completed production of
 16 eight additional custodians. On April 16, Plaintiff notified Defendants that its production for
 17 one additional custodian was substantially complete.

18 On April 15, 2021, the Court ordered Plaintiff to produce Crime Data Warehouse
 19 ("CDW") narratives, and to meet-and-confer with Defendants regarding production of other
 20 narratives and certain associated documents. ECF No. 530. The parties met-and-conferred
 21 following the Court's Order, and Plaintiff agreed to produce 10 additional categories of CDW
 22 narratives, as well as documents stored in the CDW associated with the narratives the Court
 23 ordered Plaintiff to produce. ***Defendants ask the Court to order Plaintiff to complete its***
24 *production of those narratives and associated documents by May 14, 2021, as Plaintiff has*******

25 *already represented it will endeavor to do.*******

26 parties may again meet and confer regarding production of additional documents associated
27 with other opioid-specific narratives from the CDW.

1 The Court also ordered Plaintiff to produce all of its opioids policies, procedures, and
 2 training materials and documents related to its abatement costs by May 3, 2021. *Id.* Defendants
 3 have asked for confirmation that Plaintiff has met this deadline.

4 Defendants are also evaluating the sufficiency of Plaintiff's other productions.
 5 Examples of potential deficiencies that Defendants have identified for Plaintiff include: whether
 6 all policies, procedures, and training materials for Plaintiff's pharmacists and prescribers have
 7 been produced; what appear to be significant gaps in Plaintiff's production of monthly
 8 "Medication Errors Summary" documents from Plaintiff's Laguna Honda Hospital; and whether
 9 reports related to Plaintiff's "Controlled Substances Oversight Program" have been produced.
 10 Plaintiff has represented that it is investigating these issues. Defendants will raise any disputes
 11 with the Court as necessary.

12 On April 7, Defendants made their first requests for deposition dates of two of Plaintiff's
 13 witnesses. Plaintiff responded on April 20 that the two witnesses are available on May 14 and
 14 May 17. Based on the potential production deficiencies identified above, Defendants are
 15 concerned that these depositions (and potentially others) may need to be postponed, but are
 16 working with Plaintiff to determine whether those issues can be resolved in time to take the
 17 depositions as scheduled. Although Defendants must wait until after the disclosure and analysis
 18 of Plaintiff's expert reports to take certain depositions, they intend to continue to prioritize those
 19 that can be taken earlier.

20 **3. Plaintiff's Discovery Requests**

21 Defendants have produced millions of documents in the MDL, which are deemed
 22 produced in this case. In addition, Defendants have made additional productions specific to this
 23 case.

24 For example, since the last status conference, Walgreens produced more than 25,000
 25 documents on top of the more than 30,000 documents Walgreens had previously produced in
 26 this case, and the more than 380,000 documents Walgreens has produced in the MDL. The
 27 timing of this production is directly proportional to the large number of search terms and
 28 custodians Plaintiff requested (and to which Walgreens agreed) late in the discovery schedule.

1 Nevertheless, Walgreens completed its custodial productions by May 3, so that Plaintiff could
 2 provide its expert reports on the Court's schedule.

3 By May 3 Walgreens had *also* produced nearly 10,000 hard copy "refusals to fill" and
 4 Target Drug Good Faith Dispensing checklists from its San Francisco pharmacies, in addition to
 5 its electronic Target Drug Good Faith Dispensing checklists and electronic refusals to fill
 6 produced on March 26, which totaled over 65,000 lines of data. These documents are
 7 expected to comprise approximately 1/3 of Walgreens' total hard copy productions from
 8 individual pharmacies, and are similar to the remaining hard copy documents Walgreens intends
 9 to produce by the Court's May 17 deadline. The Court set that deadline for substantial
 10 completion of Walgreens' hard copy productions, again at Plaintiff's request, so that Plaintiff
 11 could provide its expert reports on the Court's schedule. Walgreens was required to hire a
 12 number of additional vendors to go on site to Walgreens' pharmacies – sometimes multiple
 13 vendors at a single store at one time – during the peak of the COVID vaccine roll-out in order to
 14 meet this deadline. Walgreens objected to this timeline but nevertheless is on track to more than
 15 substantially complete its hard copy production by May 17. Plaintiff's complaint that
 16 Walgreens is not meeting its obligations is not well-taken. Walgreens also produced additional
 17 reports through its MDL production on April 30 and no other productions are outstanding.⁴

18 The Endo and Par Defendants substantially completed their production by the substantial
 19 completion deadline for the custodians and data stores identified to Plaintiff, utilizing the
 20 searches disclosed, as of that date. Endo and Par have also made substantial progress toward
 21 producing additional materials either agreed or ordered after the substantial completion
 22 deadline. Specifically, on April 16, 2021, Endo substantially completed its custodial production
 23 using additional jurisdiction-specific search terms negotiated in March 2021; on April 23, 2021,
 24 Endo substantially completed its production of Eric Vandal's custodial file⁵; and on April 12,

25 ⁴ Walgreens further notes that it has not only answered Plaintiff's November 2020 Interrogatories,
 26 but it has also updated these responses once already and will be doing so for a second time on
 27 Friday, May 7. Since November 2020, Walgreens has also provided Plaintiff extensive
 28 information about Walgreens' personnel responsible for compliance *and* pointed Plaintiff to the
 transcript of an individual from Walgreens' compliance department taken in the MDL discussing
 this same topic.

29 ⁵ These files were restored from back-up tapes containing Vandal's My Documents and first- and

1 2021 and April 23, 2021, Endo produced data from centralized repositories reflecting
 2 interactions by Medical Science Liaisons (including Bobbie Sue Brown) with physicians. In
 3 total, the Endo and Par Defendants have produced approximately 4.6 million documents,
 4 including over 177,000 documents in this matter specifically.

5 Additional material is forthcoming. Pursuant to the Court's March 8, 2021 Order, Par
 6 has identified for Plaintiff additional custodians related to Par marketing materials, will be
 7 commencing its production the week of May 10, 2021, , and expects to substantially complete it
 8 by the week of June 4, 2021. Moreover, in addition to the 29 Endo sales force custodians
 9 already agreed to, Endo has agreed to add 7 additional sales representative custodians that
 10 Plaintiff identified on April 19, 2021, and 4 additional custodians who at one time may have
 11 held supervisory sales responsibilities in San Francisco—1 of whom Plaintiff first requested on
 12 April 22, 2021 and the remainder of which Endo identified thereafter through additional
 13 investigation. Endo has also agreed to produce certain additional documents from all remaining
 14 San Francisco sales representatives not previously designated as custodians; Endo is presently
 15 waiting for Plaintiff to confirm agreement to Endo's proposed search term, or propose
 16 additional terms. Endo has also undertaken additional investigation in response to Plaintiff's
 17 inquiries regarding certain gaps in data produced, first identified on April 9, 2021, and is
 18 diligently working to complete that investigation. Pending the completion of that investigation,
 19 Endo expects to make additional productions of sales representative-related data by the week of
 20 May 10, 2021.

21 Allergan has deemed produced in this case 724,488 documents and 5,145,819 pages
 22 gathered and produced—without geographic limitation—in other opioid cases. It has also
 23 agreed to provide its production in the MDL regarding suspicious order monitoring-related
 24 documents. In late January and early February, Allergan agreed to conduct several additional
 25 searches for this case in particular at Plaintiff's request. On February 26, 2021, Allergan
 26 produced an additional 47,984 documents, including 190,209 pages, which includes the results
 27

28 last-in-time email back-up tapes identified as including Vandal materials so as to produce
 materials for the broadest time accessible.

1 of several of those searches. On March 13, 2021, Allergan made another substantial additional
 2 production. On March 24, 2021, Allergan produced additional chargeback and rebate data as
 3 well as its privilege log. Allergan's production is substantially complete.

4 The Teva Defendants have produced over 3.2 million documents available to Plaintiff,
 5 and have completed the production of documents for the additional agreed regional custodians.

6 **B. Status of Other Third-Party Discovery**

7 The California Department of Justice ("DOJ") produced its CURES data on April 28.
 8 Walgreens identified significant deficiencies in the CURES data, including millions of
 9 duplicative records. On May 5, Walgreens requested that DOJ reproduce the data, correcting
 10 the issues. DOJ has not yet responded to Walgreens' request.

11 In April 2020, Defendants served requests for production on Plaintiff for the production
 12 of documents and data from all pertinent subdivisions of the City and County of San Francisco.
 13 When the City and County was dismissed as a plaintiff, Plaintiff took the position that certain of
 14 its subdivisions were not within Plaintiff's custody and control, requiring third-party subpoenas.
 15 Defendants therefore served subpoenas on the San Francisco departments and entities that
 16 Plaintiff has deemed outside of its custody and control, including the Department of the
 17 Environment, Department of Emergency Management, Board of Supervisors, Controller's
 18 Office, Mayor's Office, District Attorney's Office, Department of Human Resources, Health
 19 Service System, and Human Services Agency.⁶ These subdivisions have responded to the
 20 subpoenas, and the parties are in the process of meeting and conferring regarding those
 21 responses. The parties will submit disputes to the Court as necessary.

22 Defendants are also pursuing third-party discovery from various state agencies, and have
 23 subpoenaed the Medical Board of California, the Dental Board of California, the California
 24 Board of Registered Nursing, and the United States Drug Enforcement Agency. Defendants
 25 have met and conferred with all four of those agencies, and are negotiating the scope of their
 26 productions.

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 28 ⁶ Defendants have also served subpoenas on the San Francisco Superior Court and the University
 of California San Francisco Hospital.

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2 DATED: May 7, 2021

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ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), I hereby attest that concurrence in the filing of this document has been obtained from the above signatories.

Dated: May 7, 2021

By: /s/ Kevin R. Budner

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that, on May 7, 2021, service of this document was accomplished pursuant
3 to the Court's electronic filing procedures by filing this document through the ECF system.

4 _____
5 /s/ *Kevin R. Budner* _____
6 Kevin R. Budner
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